IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 8388 OF 2004

Vidyanand Coop Bank Ltd Solapur...Petitioners

vs

Shri Sant Damaji Sahakari Sakhar Karkhana Limited .. ..Respondents

Mr G.S.Godbole for petitioners

Mr.R.V.Govilkar for respondent nos.l to 3

Mr A.Y.Sakhare for S.S.Aradhye for respondent no.6

CORAM: S.U.KAMDAR J.

Dated 5.l2.2005

P.C:

l. The present petition is challenging the order dated 8.l0.2004 passed in Appeal No.l98 of 2004. By the said order the Coop Appellate Court has stayed the order passed on attachment application under Order 38 rule 5 of the C.P.C. dated 8.0.2004. While passing the order on attachment application the trial court ordered that the property of the opponent nos. 3 and 4 to the main dispute be attached as per the schedule annexed to the application dated 24th July 2004. However, while passing the said order, a further order was passed against the respondent no. 6 that they should be permitted to deduct an amount of Rs 200

per sugar bag from the sale price of l5% released quota to the borrower bank towards the suit claim. Consequential a directions were also passed in paras 4 and 5 of the said order dated 8.9.2004. In so far as respondent no. 6 is concerned it is an admitted position that the respondent no. 6 is neither a borrower nor guarantor in respect of the suit loan. He is also not a party to the main proceedings. However, it has been contended by the learned counsel for the petitioner that the amount is directed to be deducted from l5% released quota as to recover the claim of the bank. In my opinion under Order 38 rule 5 such a recovery order against a party who is not party to the main suit cannot be passed. The learned counsel for the respondent no. 6 has contended that they have their own loan to be recovered from the sahakari karkhana and thus they are recovering their amount from the said sugar bags and sale price released therefrom and it his case that until and unless their amount is fully recovered, question of deducting the amount for the purpose of suit claim in favour of the petitioner herein does not arise. In my opinion the order passed by the trial court dated 8.9.2004 in so far as paras 3, 4 and 5 is concerned, is rightly set aside by the appellate court which requires no interference to that extent.

2. In so far as the order under clause 2 is concerned that is attachment as against respondent nos. 3 and 4 in respect of their properties. The learned counsel for the petitioner has pointed out that the respondent nos.3 and 4 are guarantors and they have executed surety in their personal capacity. The guarantee bond is annexed at pages 3l-32 of the petition. My attention is also drawn to section 9l(l)(a)(d) of the Mah Coop Societies Act to show that the suit against a guarantor, even if he is not a member, is maintainable. In that light of the matter the cooperative appellate court while passing the impugned order dated 8.l0.2004 has erred in setting aside the order to the extent of clauses l and 2 of the impugned order dated 8.9.2004. In that light of the matter the Cooperative Appellate Court’s order requires to be interfered with and order of the trial court dated 8.9.2004, in so far as the said order in paras l and 2 thereof is concerned is confirmed.

. Petition accordingly partly succeeds as aforestated. There shall be no order as to costs.